

# State's high court undercuts open government

**But the wise dissent by Justice Johnson gives hope the shroud of secrecy could still be lifted.**

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Open government in Washington state took a hard shot to the jaw last week when the state Supreme Court ruled the governor can use “executive privilege” to block the release of public documents.

The ruling misses the mark in two clear ways. First, the eight-justice majority reads something into the state constitution that’s not there. The court wrongly accepted the Governor’s Office has an inherent privilege to keep communications secret because of the constitution’s call for separation of powers between the executive, legislative and judicial branches of government.

But there’s no separation between the three branches of government and the public.

In addition, the court seemed to ignore the intent of the state’s Public Records Act, which was approved by voters in 1972.

The preamble to the law approved by the people says: “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.”

This court’s line of thinking is a stretch, at best.

The Public Records Act originally allowed 10 exemptions. It has been amended by the Legislature many times, creating a list of more than 300 exemptions.

If a governor believes a record should be kept confidential, she or he should cite the exemption. Yet, the office of former Gov. Chris Gregoire cited executive privilege — just trust us — 500 times.

The court’s dissenting opinion by Justice James Johnson was clear, concise and correct.

“The majority ignores our state’s constitution, statutes, and populist tradition and does great damage to over 120 years of open government in Washington,” Johnson wrote. “It is not alarmist to say that this decision could place a shroud of secrecy over much government conduct, unless changed by a wiser court, electorate, or legislature.”

While the court’s ruling stings, it is not a knockout blow.

The Freedom Foundation, an Olympia-based libertarian think tank, has to this point fought the good fight in challenging the Gregoire administration's secrecy in court. At issue were six specific documents on a variety of subjects, including the Alaskan Way Viaduct replacement, medical marijuana and criminal pardons.

Gov. Jay Inslee has said he will not invoke executive privilege and, thankfully, hasn't.

Nevertheless, the next governor could see it the same way as Gregoire. The high court's ruling should not stand. It is the people's government, not the governor's government.